

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SPECIAL SESSION

**LEGISLATIVE BILL 4**

Introduced by Langemeier, 23.

Read first time November 02, 2011

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to oil pipelines; to amend section 57-1101,  
2 Reissue Revised Statutes of Nebraska; to adopt the Oil  
3 Pipeline Route Certification Act; to change provisions  
4 relating to eminent domain for pipelines; to provide  
5 powers and duties for the Governor; to provide  
6 severability; to repeal the original section; and to  
7 declare an emergency.  
8 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 8 of this act shall be known and  
2 may be cited as the Oil Pipeline Route Certification Act.

3           Sec. 2. The Legislature finds that:

4           (1) The governmental authority known as the police power  
5 is inherently an attribute of state sovereignty and belongs to  
6 subordinate governmental divisions when and as conferred by the state  
7 either through its constitution or by valid legislation;

8           (2) The State of Nebraska is responsible for protecting  
9 its residents' interests in natural resources through reasonable  
10 regulation for the common good and welfare. As such, the state is  
11 responsible for ensuring that an oil pipeline proposed to be located  
12 through or within Nebraska is in compliance with all state laws,  
13 rules, and regulations relating to water, air, and wildlife under the  
14 Constitution of Nebraska and state law;

15           (3) Public policy should reflect this responsibility  
16 while simultaneously recognizing the necessity for energy use and  
17 economic benefits to Nebraska of transporting oil through or within  
18 the state, the need for economic development in Nebraska, and the  
19 opportunities that new development brings to the state for jobs and  
20 revenue;

21           (4) The State of Nebraska has a compelling interest in  
22 protecting the health and general welfare of its communities and  
23 rural areas. According to a University of Nebraska Department of  
24 Agricultural Economics report, approximately eighty percent of the  
25 public drinking water of Nebraska and nearly all of the private water

1 supply of Nebraska comes from ground water sources;

2 (5) The State of Nebraska has a compelling interest in  
3 protecting and maintaining its agricultural economy. Irrigation is a  
4 vital component of the productive agricultural economy of Nebraska.  
5 According to a 2007 Census of Agriculture report, Nebraska ranks  
6 first nationally with about 8.5 million irrigated acres;

7 (6) Under the Nebraska Ground Water Management and  
8 Protection Act, the ownership of water is held by the State of  
9 Nebraska for the benefit of its residents. Ground water is one of the  
10 most valuable natural resources in the state, and an adequate supply  
11 of ground water is essential to the general welfare of the residents  
12 of Nebraska and to the present and future development of agriculture  
13 in Nebraska;

14 (7) The Constitution of Nebraska, Article XV, section 4,  
15 states that the necessity of water for domestic use and for  
16 irrigation purposes in the State of Nebraska is a natural want. The  
17 statutory law and judicial decisions of the Nebraska Supreme Court  
18 show a clear intention to enforce and maintain a rigid economy in the  
19 use of public water to secure the greatest benefit possible from the  
20 water available for irrigation. The state has the right, under both  
21 the police powers and the Constitution of Nebraska, to regulate the  
22 use of natural rivers and streams so that waste is eliminated, In re  
23 Water Appropriation Nos. 442A, 461, 462 & 485, 210 Neb. 161, 313 N.W.  
24 2d 271 (1981);

25 (8) The State of Nebraska has a compelling interest in

1 protecting its resources and environment for economic, aesthetic,  
2 recreational, and other purposes;

3 (9) The Governor is required to review programs he or she  
4 administers and state agencies are required to utilize their  
5 authorities in section 37-807 in furtherance of the purposes of the  
6 Nongame and Endangered Species Conservation Act and to take such  
7 action necessary to insure that actions authorized, funded, or  
8 carried out by the state do not jeopardize the continued existence of  
9 such endangered or threatened wildlife or wild plants or result in  
10 the destruction or modification of critical habitat;

11 (10) The Constitution of Nebraska, Article IV, section 1,  
12 authorizes the Legislature to delegate to the Governor the duty to  
13 administer certain statutes and programs;

14 (11) The Legislature is exclusively authorized to  
15 delegate the power of eminent domain and restrict or limit the extent  
16 of its use, Burnett v. Central Nebraska Public Power and Irrigation  
17 District, 1946, 147 Neb. 458, 23 N.W.2d 661; and

18 (12) The Constitution of Nebraska, Article IV, section 6,  
19 clearly states that the supreme executive power shall be vested in  
20 the Governor, who is to take care that the laws be faithfully  
21 executed and the affairs of the state efficiently and economically  
22 administered.

23 Sec. 3. The purpose of the Oil Pipeline Route  
24 Certification Act is to provide a procedure for the state, acting  
25 through the Governor, to ensure the preservation and protection of

1 Nebraska's interests in the general welfare, economy, agricultural  
2 resources, communities, environment, wildlife, and all natural  
3 resources whenever an oil pipeline is proposed to be placed through  
4 or within Nebraska.

5           Sec. 4. For purposes of the Oil Pipeline Route  
6 Certification Act:

7           (1) Department means the Department of Environmental  
8 Quality;

9           (2) Oil pipeline means a pipeline constructed or operated  
10 in Nebraska for the transportation of petroleum or petroleum  
11 components, products, or wastes, including crude oil or any fraction  
12 of crude oil, within, through, or across the State of Nebraska;

13           (3) Panel means the panel established to advise the  
14 Governor pursuant to section 6 of this act; and

15           (4) Route certificate means an Oil Pipeline Route  
16 Certificate issued under the Oil Pipeline Route Certification Act.

17           Sec. 5. (1) Any individual, company, corporation,  
18 association, or other legal entity that intends to construct an oil  
19 pipeline in any portion of the State of Nebraska shall apply to the  
20 department for a route certificate and submit an application fee of  
21 XXX with the application. The department shall notify the Governor  
22 upon receipt of an application.

23           (2) The application shall include:

24           (a) The name and address of the applicant;

25           (b) A detailed description of the route, including maps

1 and materials the pipeline is proposed to carry;

2 (c) A statement describing the reasons for the selection  
3 of the route and any alternative routes considered;

4 (d) A statement explaining why an existing corridor was  
5 not selected as the route;

6 (e) The details of an emergency response plan;

7 (f) An explanation of the material to be transported and  
8 the environmental and economic consequences and impacts to the  
9 general welfare of a release of such material on the natural  
10 resources of the state;

11 (g) An explanation of any additional precautions that  
12 will be taken in any part of the state related to the protection of  
13 natural resources, the economy, agricultural resources, and  
14 communities or mitigation of the reasonably foreseeable impacts of  
15 the construction and operation of the proposed pipeline and  
16 reclamation plan; and

17 (h) Any other materials the department may require in its  
18 rules and regulations.

19 As part of the application, the applicant may submit any  
20 material, reports, or studies submitted by or issued to the applicant  
21 as part of a federal or state permit process.

22 (3) Within thirty days after receipt of an application,  
23 the department shall provide notice and hold a public meeting  
24 regarding the route of the oil pipeline. The purpose of holding such  
25 a public meeting shall be to inform the public of the route of the

1 oil pipeline and to solicit public input and opinion. The department  
2 shall set a date and time for the public meeting to be held at a  
3 location or locations convenient to the route of the oil pipeline and  
4 shall publish a notice of such meeting in a legal newspaper published  
5 in or of general circulation in the county or counties where the  
6 route of the oil pipeline is to be located. The notice shall be  
7 published at least ten days prior to the meeting and shall set forth  
8 the purpose, date, time, and place of the meeting.

9           Sec. 6. Upon the effective date of this act, the Governor  
10 shall appoint members to a panel as provided in this section to  
11 advise the Governor regarding the issuance of a route certificate to  
12 an applicant for a route certificate. The Lieutenant Governor shall  
13 serve as the chairperson of the panel. The appointed members of the  
14 panel shall be the director or another representative of the  
15 Department of Environmental Quality; the director or another  
16 representative of the Department of Natural Resources; the secretary  
17 or another representative of the Game and Parks Commission; the  
18 executive director or another representative of the Public Service  
19 Commission; one member of a county board from each congressional  
20 district; and one resident landowner from each congressional  
21 district. The panel may meet as often as it deems necessary. Panel  
22 members shall serve for two-year terms.

23           Sec. 7. (1) The department may adopt and promulgate rules  
24 and regulations as necessary to carry out the Oil Pipeline Route  
25 Certification Act. The department shall provide all necessary

1 administrative support for the work of the panel.

2 (2) Not later than sixty days after the department  
3 receives an application under section 5 of this act, the panel shall  
4 submit a written recommendation to the Governor regarding issuing a  
5 route certificate to the applicant or denying a route certificate.  
6 The panel may use all information submitted with the application and  
7 may consult with any person with knowledge of the subject matter that  
8 the panel determines may be of assistance in evaluating the  
9 application. The panel shall consider the following criteria in  
10 making its recommendation:

11 (a) Whether the route of the oil pipeline interferes with  
12 the state's responsibility to protect the environment and natural  
13 resources and regulate land use and water as prescribed by state law;

14 (b) Whether the applicant and the route comply with the  
15 Nebraska Ground Water Management and Protection Act and the Nongame  
16 and Endangered Species Conservation Act;

17 (c) Whether the applicant has a written mitigation plan  
18 containing measures the applicant will take to reduce or avoid  
19 potentially significant adverse impacts on the environment and  
20 ecology of the land, waters, and wildlife of the state;

21 (d) Whether any such mitigation plan would address any  
22 significant adverse effects on the state's general welfare, economy,  
23 agricultural resources, and communities;

24 (e) Whether any other oil pipeline corridor exists that  
25 could feasibly and beneficially be used for the applicant's project;



1 and

2 (f) Whether public comment has been heard and considered  
3 regarding the route pursuant to section 5 of this act.

4 (3) If the panel finds that the applicant has  
5 affirmatively met each of the criteria in section 7 of this act, the  
6 panel shall prepare a report of its findings and present such report  
7 to the Governor, along with its recommendation that the route  
8 certificate be issued to the applicant. If the panel finds that the  
9 applicant has not met each criteria in section 7 of this act, the  
10 panel shall prepare a report that describes the deficiencies of the  
11 location of the route and present such report to the Governor, along  
12 with its recommendation that the route certificate be denied.

13 Sec. 8. Within thirty days after receiving a written  
14 recommendation from the panel, the Governor shall either approve or  
15 deny an application submitted under the Oil Pipeline Route  
16 Certification Act. Upon the Governor's approval, the department shall  
17 prepare and issue a route certificate to the applicant. Upon denial,  
18 the department shall prepare and issue an order stating the same to  
19 the applicant. If the Governor has not issued a written directive to  
20 the department within thirty days after the date of the panel's  
21 recommendation, then the recommendation of the panel shall be deemed  
22 affirmed and the department shall issue the route certificate or  
23 order accordingly. The Governor's action on the application shall be  
24 final. The applicant may appeal to the Supreme Court pursuant to the  
25 Administrative Procedure Act.

1           Sec. 9. Section 57-1101, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           57-1101 Any person engaged in, and any company,  
4 corporation, or association formed or created for the purpose of  
5 transporting or conveying crude oil, petroleum, gases, or other  
6 products thereof in interstate commerce through, or across the State  
7 of Nebraska, or intrastate within the State of Nebraska, and desiring  
8 or requiring a right-of-way or other interest in real estate, and  
9 being unable to agree with the owner or lessee of any land, lot,  
10 right-of-way, or other property for the amount of compensation for  
11 the use and occupancy of so much of any lot, land, real estate,  
12 right-of-way, or other property as may be reasonably necessary for  
13 the laying, relaying, operation, and maintenance of any such pipeline  
14 or the location of any plant or equipment necessary to operate such  
15 pipeline, shall have the right to acquire the same for such purpose  
16 through the exercise of the power of eminent domain, except that no  
17 individual, company, corporation, association, or other legal entity  
18 may condemn property pursuant to sections 76-704 to 76-724 for an oil  
19 pipeline unless it has been issued a route certificate under the Oil  
20 Pipeline Route Certification Act. The procedure to condemn property  
21 shall be exercised in the manner set forth in sections 76-704 to  
22 76-724.

23           Sec. 10. The Governor under his or her general power is  
24 authorized to take all actions and carry out all duties that may be  
25 assigned to him or her by the Oil Pipeline Route Certification Act.

1                   Sec. 11. If any section in this act or any part of any  
2 section is declared invalid or unconstitutional, the declaration  
3 shall not affect the validity or constitutionality of the remaining  
4 portions.

5                   Sec. 12. Original section 57-1107, Reissue Revised  
6 Statutes of Nebraska, is repealed.

7                   Sec. 13. Since an emergency exists, this act takes effect  
8 when passed and approved according to law.